



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF SMART CHOICE)
COMMUNICATIONS, LLC FOR APPROVAL TO PROVIDE)
LOCAL EXCHANGE TELECOMMUNICATIONS)
SERVICES THROUGHOUT THE STATE OF)
NEW JERSEY)

ORDER

DOCKET NO. TE03040295

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated April 18, 2003, Smart Choice Communications, LLC ("Petitioner" or "SCC") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide resold and facilities-based local exchange telecommunications services in the State of New Jersey. On May 13, 2003, SCC also filed an amended Petition with the Board.

SCC is a limited liability company organized under the laws of the State of New York. Petitioner's principal offices are located at 59 East 54th Street, Suite 64, New York, New York 10022.

Petitioner has submitted copies of its Certificate of Incorporation from the State of New York and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, SCC was formed to provide resold and facilities-based local exchange telecommunications services throughout New Jersey. Petitioner states that it is authorized to provide local and interexchange services in the State of New York. Petitioner states that it has not been denied authority to provide telecommunications service in any jurisdiction.

In its Petition, the Company seeks authority to provide resold and facilities-based local exchange telecommunications services to both residential and business class customers throughout the entire State of New Jersey. The Petitioner states that it plans to provide basic telephone exchange services, data services, Internet, digital subscriber line service, access services, and features such as call waiting, call forwarding, speed dialing, distinctive ringing and three-way calling to business and residential customers. The Petitioner also plans to offer operator services, 911 and E911 service, directory listing, third party calling arrangement, local calling services and per use services such as call return and call redial. The Petitioner indicates that it will combine switch-less resale, leasing of local loops in conjunction with resale purchasing Unbundled Network Elements from Verizon – New Jersey, Inc. Petitioner states that currently it does not have an interconnection agreement with Incumbent Local Exchange Carriers (“ILEC”). However, once the Board grants authority requested herein, the Petitioner will enter into an interconnection agreement with ILEC. Petitioner states that it will file a tariff for Board approval. The Petitioner states that it maintains a toll-free number for its customer services inquiries.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3 which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts (“USOA”), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner’s business in the State of New Jersey at Petitioner’s corporate offices in New York, New York. Petitioner also states, upon written notice from the Board and/or Board Staff, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, SCC states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to SCC, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et. seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed SCC's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange telecommunications services throughout New Jersey subject to approval of its tariff. The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is approved by the Board.

The Board HEREBY ORDERS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N.J.S.A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 3) Pursuant to N.J.S.A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Audits, an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the company's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form is due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of

these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 9/11/03

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)
KRISTI IZZO
SECRETARY

IN THE MATTER OF THE PETITION OF SMART CHOICE COMMUNICATIONS, LLC
FOR APPROVAL TO PROVIDE LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES
THROUGHOUT NEW JERSEY

DOCKET NO. TE03040295

SERVICE LIST

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